

**Chris J. Tardio**

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**From:** Gerard Stranch <gerards@branstetterlaw.com>  
**Sent:** Tuesday, November 19, 2013 10:20 AM  
**To:** Chris J. Tardio  
**Cc:** Lisa A. Ohman; Chalos, Mark P. (mchalos@lchb.com) (mchalos@lchb.com)  
**Subject:** RE: NECC cases - Judge Boal's ruling on subpoenas

Chris see below in red.

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**From:** Chris J. Tardio [mailto:chris@gideoncooper.com]  
**Sent:** Tuesday, November 19, 2013 9:26 AM  
**To:** Gerard Stranch  
**Cc:** Lisa A. Ohman; Chalos, Mark P. (mchalos@lchb.com) (mchalos@lchb.com)  
**Subject:** RE: NECC cases - Judge Boal's ruling on subpoenas

Gerard:

Can I get a response on this, please, to avoid filing a motion?

Chris J. Tardio, Esq.  
Member // Gideon, Cooper & Essary, PLC

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**From:** Chris J. Tardio  
**Sent:** Thursday, November 14, 2013 6:28 PM  
**To:** gerards@branstetterlaw.com  
**Cc:** Lisa A. Ohman; Chalos, Mark P. (mchalos@lchb.com) (mchalos@lchb.com)  
**Subject:** NECC cases - Judge Boal's ruling on subpoenas

Gerard:

I presume you have had a chance to read Judge Boal's order on the subpoenas, issued yesterday, or that you will read it soon.

Two issues that were not specifically addressed but seem relatively clear to me:

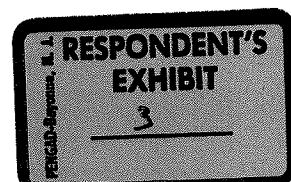
1. Judge Boal ruled at page 11-12 that the subpoenas to entities that are now parties to the MDL are not quashed on that ground, but, "[t]o the extent that the written discovery requests overlap with the Rule 45 subpoenas, they would violate Rule 26's prohibition on duplicative discovery. Accordingly, the Court finds that any respondent who is a party need not answer to the same requests twice."

In footnote 10, she cites STOPNC and HA as falling in this category but fails to list Specialty Surgery Center. As you know, SSC falls in the same category, as was mentioned at the hearing and in the papers. Please confirm for me that you agree SSC should be treated the same as STOPNC and HA for purposes of this specific ruling at page 11-12, i.e., that the subpoena to SSC is not quashed but SSC "need not answer to the same requests twice."

I can file a motion for a specific finding as to SSC, but it seems that it would be a waste of time as the same reasoning/ruling should apply.

We agree that SSC should be treated the same as STOPNC and HA as to answering the same requests twice.

2. Judge Boal, at page 16-17, specifically quashed the subpoena to Chattanooga Neurosurgery & Spine, ruling that, "[b]ecause CNS is not listed on the FDA list, the PSC had no authority to subpoena it[.]"



Although Her Honor did not specifically cite Dr. Jones in this section, he falls in the same category. He is not on the FDA list of NECC customers at <http://www.fda.gov/downloads/Drugs/DrugSafety/FungalMeningitis/UCM325466.pdf>. Thus, I think it reasonable to conclude the same logic applies to Dr. Jones.

Please confirm for me that you agree that Dr. Jones should be treated the same as CNS and that the subpoena is withdrawn.

The Subpoena against Dr. Jones will not be withdrawn. As you know, Dr. Jones was the medical director at PCA pain, which is on the FDA's list. He is now the medical director at CPS pain, which is in the exact same location as PCA was prior to the sale to CPS. We have also been told that all of the PCA files were transferred to CPS and Dr. Jones. Hence, we will leave the subpoena in place and expect Dr. Jones to respond fully.

Again, I can file a motion for a specific finding as to Dr. Jones, but it seems that it would likewise be a waste of time.

\* \* \* \* \*

Please call me if you wish to discuss. Otherwise, I look forward to your response.

Thanks.

Chris J. Tardio, Esq.  
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